

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JUAN DAVILA-BAJANA,
Plaintiff

TIM HOLOHAN, et al.,
Defendants

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C.A. No. 04-253 Erie

MEMORANDUM ORDER

This civil rights action was received by the Clerk of Court on September 7, 2004, and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Amended Report and Recommendation [Document # 45], filed on July 18, 2006, recommended that Defendants' motion to dismiss [Document # 16] be granted in part and denied in part. The parties were allowed ten days in which to file Objections to the Report and Recommendation. Service of the Report and Recommendation was made on Plaintiff by certified mail and on Defendants. Defendants filed Objections on July 21, 2006 [Document # 47].

Plaintiff was granted an extension of time in which to file Objections. Inadvertently, the undersigned issued an Order on August 8, 2006, which adopted the Report and Recommendation before the new deadline for Plaintiff to file Objections had passed.

On August 18, 2006, Plaintiff filed a Motion for Reconsideration, as well as his Objections to the Report and Recommendation. Documents ## 50 and 51.

In light of Plaintiff's Motion for Reconsideration and timely Objections, the undersigned has again conducted a *de novo* review of the motion and documents in the case, together with the Amended Report and Recommendation, and both sets of objections thereto.

AND NOW, this ____ day of August, 2006;

IT IS ORDERED that the Plaintiff's motion for reconsideration [Document # 51] is

GRANTED.

IT IS FURTHER ORDERED that the Defendants' motion to dismiss [Document # 16] is GRANTED as to the FTCA claim and Eighth Amendment claim, and is DENIED as to the retaliation claim. The Amended Report and Recommendation [Document # 45], filed on July 18, 2006, is adopted as the opinion of the Court.

Sean J. McLaughlin
UNITED STATES DISTRICT JUDGE